2018 IL App (1st) 171927-U
No. 1-17-1927

SECOND DIVISION
September 28, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEONOR BALCAZAR, Plaintiff, v. ADVOCATE HEALTH AND HOSPITALS CORPORATION d/b/a TRINITY HOSPITAL, MICHAEL J. ESCOTO, D.O., CHICAGO FAMILY HEALTH CENTER, INC., and NIKIE PARIKH, M.D., Defendant, (Vanessa Balcazar, Individually and as Successor Independent Administrator of the Estate of Leonor Balcazar, deceased, Plaintiff-Appellant; Advocate Health and Hospitals Corporation d/b/a Trinity Hospital, and Michael J. Escoto, M.D., Defendants-Appellants).	)	Appeal from the Circuit Court of Cook County. No. 15 L 002941 The Honorable Deborah M. Dooling, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Walker concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment in favor of defendant and against plaintiff affirmed where the plaintiff's cross-examination of the defendant doctor was not improperly restricted, the defendant doctor's testimony was not inconsistent with admissions made by the defendant hospital, and the

testimony of the decedent's primary care physician did not come as an unfair surprise to the plaintiff and was relevant to whether the defendant doctor informed the decedent of the abnormal CT results.

¶ 2 Following a jury trial in this medical malpractice action, judgment was entered against plaintiff, Vanessa Balcazar, individually and as administrator of the estate of Leonor Balcazar, and in favor of defendants, Advocate Health & Hospitals Corporation, d/b/a Trinity Hospital ("Advocate"), and Michael J. Escoto, D.O. Plaintiff appeals, arguing that the trial court erred in (1) not allowing her to cross-examine Dr. Escoto on his ability to refer patients to specialists, (2) allowing Dr. Escoto to testify inconsistently with admissions made by Advocate, and (3) allowing Nikie Parikh, M.D. to testify. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 Because the record in this matter is extensive, we recount only that information that is necessary for our disposition of the issues raised on appeal.

¶ 5 Plaintiff's claims against Advocate and Dr. Escoto arose out of Dr. Escoto's treatment of Leonor in the emergency room of Advocate's Trinity Hospital on June 28, 2012. That morning, Leonor, who spoke only Spanish, presented in the emergency room with complaints of abdominal pain. Leonor's daughter Guadalupe Luna accompanied Leonor to the emergency room and acted as Leonor's interpreter. During his treatment of Leonor, Dr. Escoto ordered two CT scans to be performed, one with and one without contrast. Those CTs showed a 3.3 cm mass on Leonor's liver, which the reading radiologist stated could be a neoplasm (*i.e.*, cancer). The radiologist recommended a specialist consultation. Plaintiff alleged that Dr. Escoto failed to inform Leonor of the results of the CT, resulting in a delay in Leonor's cancer diagnosis. She was ultimately diagnosed with Stage IV cholangiocarinoma in August 2014, and Leonor died on October 31, 2015.

¶ 6 This case was instituted prior to Leonor's death and initially included Chicago Family Health Center, Inc., and Dr. Parikh, Leonor's primary care physician, as defendants. They were ultimately dismissed from the present case and became defendants to a federal suit by plaintiff, because during the relevant time period, Dr. Parikh worked for Chicago Family Health Center, which was a federally funded clinic.

¶ 7 It appears from the record that Dr. Parikh's status as an employee of a federally funded clinic also made it procedurally difficult to secure her deposition and trial testimony. Although the parties were able to secure the discovery deposition of Dr. Parikh, the question of whether the Department of Health and Human Services ("HHS") would permit her to testify live at trial remained open at the time that trial began, and there were numerous discussions on the topic throughout the course of trial. During several of these discussions that took place before the jury was selected, defendants requested that the trial be continued to allow the issue of whether Dr. Parikh would testify to be resolved. Plaintiff repeatedly objected to those requests and insisted that the trial proceed as scheduled, and the trial court sustained plaintiff's objections in this respect. There was also discussion about whether Dr. Parikh's discovery deposition could be treated as an evidence deposition and read at trial, but the trial court denied that request. Right up until the day that trial began, defendants provided updates on their efforts to secure Dr. Parikh's attendance at trial. Minutes before opening statements, the trial court clarified that although it had ruled that Dr. Parikh's discovery deposition could not be used as an evidence deposition at trial, it had never ruled that Dr. Parikh could not testify live at trial. Again, after the testimony of plaintiff's first witness, the trial court reiterated that the possibility remained that Dr. Parikh would testify at trial.

¶ 8 At trial, plaintiff called Dr. Kenneth Corre, an emergency physician, as her standard-of-care expert. Dr. Corre testified that Dr. Escoto deviated from the applicable standard of care in treating Leonor in two ways: (1) he failed to inform Leonor of the abnormal CT findings and that the CT findings were suspicious for cancer, and (2) he failed to give Leonor comprehensive aftercare instructions regarding the urgency of getting follow up care for the liver mass. With respect to the latter, he opined that Dr. Escoto should have included the CT results and listed the liver mass as a diagnosis in the discharge instructions given to Leonor.

¶ 9 Dr. Joshua Ellenhorn, a surgical oncologist, also testified on behalf of plaintiff. He testified that, based on his review of Leonor's medical records, she had Stage I cancer in 2012 and that the tumor reflected on the June 2012 CT scans could have been surgically removed successfully. Leonor's likelihood of living five or more years after surgery would have been about 60%. By the time that Leonor was diagnosed with cancer in 2014, the tumor on her liver had grown to over 10 cm, there were secondary tumors on her liver, and her lymph nodes and lungs had been invaded. Dr. Ellenhorn opined that surgery would not have been able to cure Leonor's cancer at that point.

¶ 10 Prior to calling Dr. Escoto as an adverse witness, plaintiff read into evidence several admissions made by Advocate in response to Supreme Court Rule 216 (eff. July 1, 2014) requests to admit. They were as follows:

- "[O]n June 28, 2012, Dr. Escoto could not view or access Leonor Balcazar's radiology reports or images via the PACS system without a username or password."
- "[O]n June 28, 2012, Dr. Escoto was not a user on the PACS system; did not have a username or password."

- "[T]he Cerner Care Connection audit trail contains a full or complete audit trail for Leonor Balcazar's emergency room admission to Advocate Trinity Hospital on June 28, 2012."
- "Dr. Escoto first accessed Leonor Balcazar's electronic medical record via Cerner Care Connection via [*sic*] June 28, 2012 at 7:23."
- "Dr. Escoto closed out of Leonor Balcazar's medical record on June 28, 2012, at 110247 [*sic*]."
- "[O]n June 28, 2012, there existed an emergency room of Advocate Trinity Hospital and EE tracking shell board."
- "[O]n June 28, 2012, that EE tracking shell board provided the status of pending and completed physician's orders."
- "[O]n June 28, 2012, the EE tracking shell board did not display or post any patient data including tests results and radiology reports."

¶ 11 Plaintiff then called Dr. Escoto as an adverse witness. Dr. Escoto testified that he did not have any independent recollection of treating Leonor on June 28, 2012. From his treatment notes, he testified that he ordered the second CT with contrast for the purpose of further evaluating the liver mass that was found on the first CT. It was Dr. Escoto's custom and practice, prior to sending a patient for a test, to speak with the patient about why he was ordering the test. After receiving the report on the second CT, Dr. Escoto copied and pasted the entire CT report into his electronic treatment notes, so that whomever Leonor followed up with about the liver mass could have that information readily available.

¶ 12 Dr. Escoto did not have an independent recollection of informing Leonor of her CT results, but his treatment notes contained the CT results and he documented in his treatment

notes that he explained the results of all diagnostic tests to her and her family and impressed upon her the importance of following up with her primary care physician in one to two days. His notes also reflected that Leonor indicated an understanding of his instructions to her. It was also Dr. Escoto's custom and practice to explain all test results to every one of his patients. After conducting his reevaluation of Leonor, Dr. Escoto prepared his notes from that reevaluation at 11:01 a.m. and then discharged Leonor at 11:02 a.m.

¶ 13 He admitted that he did not include in the discharge instructions anything about the liver mass, but testified that they did include his directive that Leonor should follow up with her primary care physician within one to two days. He did not believe that the standard of care required that he include in the discharge instructions every test he performed and every finding made during the emergency room visit. Because Leonor came to the emergency room for treatment of abdominal pain, and because the liver mass was an incidental finding unrelated to Leonor's abdominal pain, the discharge instructions only contained information regarding abdominal pain.

¶ 14 At one point during the direct examination of Dr. Escoto, plaintiff's counsel began to question him about whether he had the ability to immediately refer Leonor to a specialist or have a specialist consult conducted while Leonor was in the emergency room. Defense counsel objected on the basis of "213." During the following sidebar, defense counsel explained that the basis for the objection was that plaintiff had not disclosed Dr. Escoto's failure to immediately refer Leonor to a specialist or to have a specialist consult performed in the emergency room as a theory of negligence and that, in any case, plaintiff did not have an expert to testify that the standard of care required Dr. Escoto to do so. The trial court sustained defendants' objection on

the basis that plaintiff did not have an expert to testify that the standard of care required such actions by Dr. Escoto.

¶ 15 Dr. Escoto testified that PACS is a computer system used by the radiology department of Advocate. In the emergency room, there is a PACS computer right next to the emergency room department's computer, and the doctors are able to read radiological images and reports on the PACS computer. Dr. Escoto acknowledged that a username and password is necessary to log into the PACS system and that he does not have his own username and password. He also testified, however, that when he arrives for his shift, the PACS computer is usually already logged in (by a member of the radiology department, he assumed). If it is not already logged in or if it logs out at some point during his shift, he would call the radiology department for someone to come down and log back into the system. Although radiological images and reports could eventually be accessed on the emergency room computer, they were accessible sooner through the PACS system.

¶ 16 Laurie Gift, an IT director with Advocate, testified next regarding the Cerner Care computer system utilized by Advocate hospitals for electronic medical records. The Cerner care system is separate and distinct from the emergency department's electronic tracker board, which displays up-to-date information on patients currently in the emergency room, and from the PACS system. According to Gift's testimony, a person would need his or her own username and password to access the Cerner Care system, and it was against policy for a person to use someone else's username and password. Records for the Cerner Care system for June 28, 2012, show that Dr. Escoto opened Leonor's chart at 9:05 a.m. and again at 11:01 a.m. The records did not indicate that he opened Leonor's chart at any time between 9:05 a.m. and 11:01 a.m., but Gift testified that the chart could have remained open during that time, allowing Dr. Escoto access

without registering another entry on the system's records. According to Gift, the Cerner Care system will not automatically log a user off until after three hours of inactivity. The records for the Cerner Care system indicate who accessed a patient's chart and when they opened it, but the records do not show what the user looked at, what they signed, if they entered orders, how long they were in the chart, or whether they reviewed any specific documents.

¶ 17 Dr. Gary Steinecker, a medical oncologist, testified that he was Leonor's treating oncologist. He started treating Leonor in August 2014, by which time the mass on Leonor's liver had grown, there were additional spots of cancer on her liver, and spots of cancer on her lungs. At that time, Leonor had incurable Stage IV cancer and surgery would not have helped her condition. Looking at Leonor's medical records, Dr. Steinecker was of the opinion that in 2012, Leonor had Stage I cancer.

¶ 18 The following morning of trial (a Thursday), defendants notified the trial court that the HHS had reconsidered its earlier denial and would now allow Dr. Parikh to testify live at trial the following Monday. Plaintiff objected on the basis that she had put on nearly her entire case in chief, she had not received any notice that Dr. Parikh would be testifying, Dr. Parikh's testimony was irrelevant to defendants' alleged negligence, and Dr. Parikh's testimony would contain double hearsay. The trial court overruled plaintiff's objections, stating that it had already ruled that Dr. Parikh would be allowed to testify, that plaintiff was well aware all along that it was possible that Dr. Parikh would testify, and that defendants had previously asked to have trial continued so that the issue could be resolved but plaintiff had objected to the continuance. Plaintiff then moved for a mistrial, which the trial court denied.

¶ 19 Plaintiff asked to subpoena Dr. Parikh to testify as an adverse witness in plaintiff's case before the following Monday. The trial court directed defendants to contact HHS and request

that Dr. Parikh testify earlier. Defendants objected to plaintiff calling Dr. Parikh in her case, arguing that she failed to disclose Dr. Parikh as a potential witness. Later that day, defendants notified the trial court and plaintiff that Dr. Parikh could not testify earlier than Monday, and the trial court observed that plaintiff had not listed Dr. Parikh on her witness list. Plaintiff responded by stating that her witness list indicated that they might call any of the witnesses listed by defendants.

¶ 20 Trial continued that day with the testimony of Leonor's husband, Serafin Balcazar, and four of her children—Nicholas Balcazar, Gloria Martinez, plaintiff, and Guadalupe Luna. Serafin, Nicholas, Gloria, and plaintiff all testified about the type of person Leonor was and the negative impact that her passing had on the family as a whole. None of them were present during Dr. Escoto's treatment of Leonor. Guadalupe, however, was. She testified that she went to the emergency room with Leonor on June 28, 2012. During the entire time that they were there, Guadalupe was never made aware that Leonor had undergone two CT scans. Although Dr. Escoto spoke with her and Leonor shortly before Leonor was discharged, he told them that all of Leonor's tests had come back normal. At no point did Dr. Escoto inform them that Leonor had any kind of mass on her liver or recommend that Leonor seek treatment from a specialist. He did, however, instruct them to follow up with Leonor's primary care physician within one to two days. In accordance with his instructions, they reached out to Dr. Parikh and found that Leonor already had an appointment scheduled with her. It was not until August 2014 that Guadalupe, Leonor, and the rest of the Balcazar family learned that Leonor had cancer. Guadalupe testified that if they had known in 2012 that Leonor had a tumor on her liver, they would have sought treatment from Dr. Steinecker at that time.

¶ 21 On the following day of trial, defendants started the presentation of their case with the testimony of Dr. Steven Flamm, a liver doctor, who testified that based upon his review of Leonor's medical records, she had cirrhosis of the liver and portal hypertension in 2012 and, thus, was not a surgical candidate at that time.

¶ 22 Nurse Michelle Spikes testified next. She testified that she was a nurse in the emergency room when Leonor came in on June 28, 2012. Although she did not have any specific recollection of caring for Leonor on that day, Nurse Spikes testified that it was her practice to tell patients when and what tests had been ordered by the doctors and that the doctors typically do the same. She also testified that it was her practice to go through the discharge paperwork with patients. She acknowledged that the CT scans were not referenced in Leonor's discharge papers, but she also testified that she had never seen discharge papers that listed all of the tests performed on a patient while the patient was in the emergency room.

¶ 23 Dr. Edward Ward, an emergency room physician, testified as defendants' standard-of-care expert. He testified that the standard of care that applied to Dr. Escoto's treatment of Leonor required Dr. Escoto to inform Leonor of the abnormal CT results and to impress upon her the urgency of seeking follow up treatment. It was Dr. Ward's opinion that Dr. Escoto had complied with this standard of care and did not fail to do anything that a well-qualified emergency room physician would have done for Leonor. The mass on Leonor's liver was an incidental finding and was not the cause of her abdominal pain. Dr. Escoto did not have a duty to tell her that she had cancer (as the mass had not yet been determined to be cancer), give her copies of the CT reports, or even to order the second CT scan for further evaluation of the mass, so long as Dr. Escoto informed Leonor of the abnormal results of the first CT and instructed her to seek follow up care.

¶ 24 With respect to Dr. Escoto's discharge instructions and treatment notes, Dr. Ward opined that they complied with the applicable standard of care, because they directed Leonor to follow up with her primary care physician; stated that Dr. Escoto had counseled Leonor and her family about Leonor's diagnosis, test results, treatment plan, and prescriptions; reflected that Leonor indicated an understanding of Dr. Escoto's instructions; and were confirmed by the nurse's notes indicating that Leonor had been informed of what happened during her treatment, her test results, and her discharge plan. Dr. Ward testified that he had never seen discharge instructions that listed every test performed on a patient during an emergency room visit.

¶ 25 At the end of the testimony during this day of trial, the subject of Dr. Parikh's testimony was again raised. During this discussion, plaintiff again argued that Dr. Parikh's testimony was irrelevant. The trial court disagreed, finding that it was relevant because the type of treatment that Leonor received from Dr. Parikh after the June 28, 2012, emergency room visit was relevant to whether Dr. Escoto had informed Leonor of the abnormal CT results.

¶ 26 During the last day of evidence, Dr. Talia Baker, a liver transplant and hepatobiliary surgeon, testified that, in her opinion, Leonor was not a surgical candidate in June 2012, due to Leonor's comorbidities—morbid obesity, uncontrolled diabetes, hypertension, and cirrhosis of the liver—along with the fact that the tumor had a poor biology. According to Dr. Baker, Leonor likely would not have survived a resection surgery and, in any case, surgical intervention would not have changed the tumor's clinical course or Leonor's outcome.

¶ 27 Dr. Kenneth Micetich, a medical oncologist, testified that although there was not enough information to precisely stage Leonor's cancer in June 2012, statistically speaking, it had likely progressed beyond Stage I by that time and that Leonor likely had a poor prognosis at that time.

¶ 28 Dr. Parikh testified last. She testified that she was Leonor's primary care physician. She saw Leonor on July 31, 2012, for breast and cervical cancer screening. Leonor informed her of the fact that she visited the emergency room for abdominal pain and had several tests performed. Dr. Parikh had Leonor sign a release so that Dr. Parikh's office could obtain Leonor's records from that emergency room visit. After receiving the medical records from Leonor's emergency room visit on June 28, 2012, Dr. Parikh put a note in Leonor's chart indicating that Leonor had undergone CTs and that a mass had been found on her liver. The note also stated that at Leonor's next visit, Dr. Parikh would recheck certain labwork and refer Leonor to hepatology. At a November 2012 visit with Dr. Parikh, Leonor informed Dr. Parikh that her abdominal pain had resolved and that she had seen a hepatologist two months prior and was told by the hepatologist that she did not need any further follow up. Leonor also told Dr. Parikh that she could not remember the name of the hepatologist that she saw. The record from the November 2012 visit also indicated that Leonor had a liver ultrasound in July 2012 and that the ultrasound was within normal limits. The November 2012 visit closed with Leonor stating that she would try to obtain copies of the records from her hepatology visit or at least find the name of who she saw so that Dr. Parikh's office could obtain the records.

¶ 29 Dr. Parikh saw Leonor again in February 2013. At that time, Leonor told Dr. Parikh that she still could not remember the name of the liver doctor she had seen, but that she would ask her daughter and let Dr. Parikh know during her next visit. In July 2013, Leonor told Dr. Parikh that she still was unsure as to where she saw the hepatologist and that she did not have any paperwork from that visit. At that point, Dr. Parikh referred Leonor for a repeat CT of her abdomen/pelvis and a hepatology evaluation. Leonor's records indicate that the CT provider

attempted to contact Leonor four times to schedule the appointment for the repeat CT but that they were unable to reach her.

¶ 30 After the close of evidence and closing arguments, the case was submitted to the jury, which ultimately returned a verdict in favor of defendants and against plaintiff.

¶ 31 Plaintiff filed a posttrial motion in which she argued, among other things, that the trial court had improperly restricted her cross-examination of Dr. Escoto, the trial court erred in allowing Dr. Parikh to testify for defendants and barring her from testifying in plaintiff's case in chief, and the trial court improperly allowed the introduction of evidence that contradicted Advocate's admissions. The trial court denied plaintiff's posttrial motion, and plaintiff filed this appeal.

¶ 32 ANALYSIS

¶ 33 On appeal, plaintiff argues that the trial court erred in (1) not allowing her to cross-examine Dr. Escoto on his ability to refer patients to specialists, (2) allowing Dr. Escoto to testify inconsistently with admissions made by Advocate, and (3) allowing Dr. Parikh to testify. As we will discuss, we conclude that none of these issues has merit.

¶ 34 Cross-Examination of Dr. Escoto

¶ 35 Plaintiff first argues that the trial court improperly limited her cross-examination of Dr. Escoto on his ability to refer patients to specialists. According to plaintiff, the trial court "ruled that [p]laintiff was limited in cross[-]examination to what was disclosed in Dr. Escoto's Rule 213(f)(3) opinions." According to plaintiff, this ruling was erroneous, because a cross-examining party is not limited by what was disclosed in the expert disclosures, but instead, under Supreme Court Rule 213(g), may elicit information and opinions from an expert witness on cross-examination.

¶ 36 Plaintiff's argument in this respect fails because she misapprehends the trial court's ruling. The trial court disallowed plaintiff's cross-examination of Dr. Escoto regarding his ability to refer patients to specialists because the trial court determined that such testimony was irrelevant where plaintiff had failed to put on any evidence that the applicable standard of care required Dr. Escoto to personally and immediately refer Leonor to a specialist. The trial court made this abundantly clear on more than one occasion. Thus, plaintiff's arguments about the fact that Rule 213(g) permits a cross-examining party to solicit opinions from an expert witness without prior disclosure is a red herring. Even assuming merit to plaintiff's Rule 213(g) argument, reversal is not warranted if the testimony plaintiff sought to elicit was otherwise irrelevant.

¶ 37 "To be relevant, evidence must establish a fact of consequence to the determination of the action: it must be material and have probative value." *Calloway v. Bovis Lend Lease, Inc.*, 2013 IL App (1st) 112746, ¶ 119. Evidence is relevant if it is material to a party's theory of the case, but where it is not, it is properly excluded. See *1601 South Michigan Partners v. Measuron*, 271 Ill. App. 3d 415, 417 (1995) (parties are entitled to present evidence that is relevant and material to their theory of the case); *Beaman v. Swedish American Hospital Association of Rockford*, 179 Ill. App. 3d 532, 538-39 (1989) (trial court properly excluded evidence that was not relevant to a disclosed theory of the case). The trial court has discretion to regulate the scope and extent of cross-examination of a witness. *Calloway*, 2013 IL App (1st) 112746, ¶ 119.

¶ 38 Here, the theories of the case that plaintiff presented at trial were that Dr. Escoto deviated from the applicable standard of care by failing to inform Leonor of the abnormal CT results and by failing to give Leonor comprehensive aftercare instructions regarding the urgency of getting follow up care for the liver mass. These were the two deviations to which Dr. Corre testified on

behalf of plaintiff. At no point during trial did plaintiff present any evidence or argument that the standard of care required Dr. Escoto to refer Leonor to a specialist or to have a specialist consult with her in the emergency room. Accordingly, whether Dr. Escoto had the ability to refer patients to specialists or call for immediate consults is not relevant to any theory on which plaintiff tried her case.

¶ 39 On appeal, plaintiff attempts to argue that because her Second Amended Complaint contained an allegation that Dr. Escoto was negligent in failing to refer her to a specialist for the liver mass, Dr. Escoto's testimony about his ability to provide referrals was relevant. There are two shortcomings in this argument. First, on the day that the parties started presenting evidence at trial, plaintiff filed a Third Amended Complaint, which did not allege that Dr. Escoto was negligent for failing to refer Leonor to a specialist. Likewise, plaintiff's Fourth Amended Complaint and Fifth Amended Complaint, both of which were filed during the course of the trial, did not contain any allegation that Dr. Escoto was negligent for failing to refer Leonor to a specialist. Because plaintiff's Second Amended Complaint was superseded by the three subsequent amended complaints, none of which contained an allegation regarding a failure to refer, the allegations of the Second Amended Complaint are irrelevant. See *Redelman v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912, 926 (2007) ("Our courts have historically held that an amendment that is complete in itself, which does not refer to or adopt a prior pleading, supersedes it, and the original pleading ceases to be a part of the record, being in effect abandoned or withdrawn."). Second, even if the Second Amended Complaint had not been superseded at the time of trial, the fact remains that despite the allegations in the Second Amended Complaint, plaintiff chose to pursue her case at trial based only on the theories that Dr.

Escoto was negligent in failing to inform Leonor of the abnormal CT results and failing to provide her with comprehensive discharge instructions on the liver mass.

¶ 40 Plaintiff also argues that Dr. Escoto's testimony about his ability to provide referrals would have been relevant to his personal practices. Again, however, plaintiff cannot get over the threshold relevance hurdle. Even if Dr. Escoto would have testified that he had the ability to refer a patient to a specialist and that his practice was to do so, absent any evidence that Dr. Escoto was *required* to do so by the applicable standard of care, his failure to provide a referral to Leonor is irrelevant.

¶ 41 According to plaintiff, this testimony would also have been relevant to whether Dr. Escoto even read the CT reports, because the fact that Dr. Escoto had the ability to refer Leonor to a specialist but chose not to indicates that he did not read it. We disagree. We see no connection between Dr. Escoto's ability to provide referrals and his reading of the CT report, and plaintiff makes no attempt to explain how Dr. Escoto's decision not to immediately refer Leonor to a specialist makes it more likely that he did not read the CT report at all.

¶ 42 Finally addressing her failure to present evidence that the standard of care required Dr. Escoto to refer Leonor to a specialist, plaintiff argues that Dr. Corre's testimony included such evidence and that, in any case, she could have established the standard of care through Dr. Escoto. With respect to Dr. Corre, at no point did he testify that the standard of care required Dr. Escoto to refer Leonor to a specialist. Rather, he only testified that the standard of care required Dr. Escoto to inform Leonor of the abnormal CT results and to make sure that she left the emergency room with an understanding of her test results and the urgency of seeking additional treatment. Plaintiff does not cite any testimony of Dr. Corre to the contrary. As for Dr. Escoto, although it might have been legally permissible for plaintiff to present additional standard of care

evidence through him, she did not do so. Moreover, despite the fact that the trial court made clear that the lack of standard of care evidence was the hurdle to questioning Dr. Escoto about his ability to refer patients to specialists, plaintiff made no argument that she could and intended to do so through Dr. Escoto. In addition, despite asking Dr. Escoto other questions about what the standard of care required, plaintiff never attempted to ask him whether the standard of care required a referral.

¶ 43 In sum, we conclude that the trial court did not abuse its discretion in finding that evidence of Dr. Escoto's ability to refer patients to specialists was irrelevant where there was no evidence that the applicable standard of care required Dr. Escoto to do so.

¶ 44 Evidence Contradicting Admissions

¶ 45 Plaintiff next argues that the trial court erred in allowing Dr. Escoto to testify inconsistently with admissions made by Advocate. Specifically, plaintiff argues that Dr. Escoto's testimony that he was able to view images and reports on the PACS system was in direct contradiction to Advocate's admissions that Dr. Escoto was not a user on the PACS system, did not have a username and password, and could not access the PACS system without a username and password.

¶ 46 The admissions at issue here were made in response to Supreme Court Rule 216 requests to admit issued by plaintiff. Admissions in response to requests to admit under Rule 216 operate as judicial admissions, cannot be controverted, and withdraw the admitted facts from contention. *Tires 'N Tracks, Inc. v. Dominic Fiordirosa Construction Co., Inc.*, 331 Ill. App. 3d 87, 91 (2002). In other words, they are conclusive on the party making the admission. *Brummet v. Farel*, 217 Ill. App. 3d 264, 267 (1991) (stating that judicial admissions are conclusive on the party making them); *Hansen v. Ruby Construction Co.*, 164 Ill. App. 3d 884, 888 (1987) (finding

that the plaintiff was bound by his admission and should not be permitted to contradict the admission by introducing inconsistent evidence).

¶ 47 Here, plaintiff's complaints about Dr. Escoto's testimony contradicting Advocate's admissions fail for two primary reasons. First, the admissions were made by Advocate, not Dr. Escoto. Accordingly, Advocate was bound by those admissions, not Dr. Escoto. See *Brummet*, 217 Ill. App. 3d at 267 (stating that judicial admissions are conclusive on the party making them); *Hansen*, 164 Ill. App. 3d at 888 (finding that the plaintiff was bound by his admission and should not be permitted to contradict the admission by introducing inconsistent evidence). Second, even if Advocate's admissions had some sort of binding effect on Dr. Escoto, Dr. Escoto's testimony was not inconsistent with the admissions. Plaintiff's argument to the contrary relies on an unwarranted broadening of the admissions. According to plaintiff, Dr. Escoto's testimony that he was able to view images and reports on the PACS system by way of a computer logged in by a radiology department member was inconsistent with Advocate's admissions that "Dr. Escoto could not view or access Leonor Balcazar's radiology reports or images via the PACS system without a username or password" and that "Dr. Escoto was not a user on the PACS system; did not have a username or password." We disagree. Although Advocate admitted that "*a* username or password" (emphasis added) were necessary to access the PACS system, there was no admission that the username and password must belong to the person accessing the system. In other words, it is undisputed that someone must log into the PACS system in order to gain access to the images and reports. It is also undisputed that Dr. Escoto did not have his own username and password for the PACS system. Those undisputed facts, however, do not foreclose the possibility that someone who did possess a username and password logged into the PACS system and then allowed Dr. Escoto (and other emergency room

personnel, apparently) to view and utilize the information in the PACS system, which is exactly what Dr. Escoto testified happened.

¶ 48 Plaintiff takes great issue with the fact that such a practice might violate hospital policy or HIPAA regulations. We pass no judgment on this question, because the only question before us is whether Dr. Escoto's testimony contradicted Advocate's admissions. We conclude that the two were not inconsistent and the fact that Dr. Escoto's testimony might reveal some actions that violate hospital policy or federal regulations does not alter that conclusion.

¶ 49 In her brief, plaintiff also argues that the trial court erred in telling the jury that it could consider Advocate's admissions "as statements by the party" rather than instructing the jury that they were admissions that removed those facts from contention, denying her request for an instruction on stipulations, and refusing to send the written admissions back to the jury. With respect to the contention that the trial court, prior to the reading of the admissions, improperly told the jury that it could consider the admissions "as statements by the party," we note that plaintiff failed to register a contemporaneous objection to this statement, resulting in its waiver. See *Wodziak v. Kash*, 278 Ill. App. 3d 901, 914 (1996) ("In order to properly preserve an issue for appeal, a party must make a contemporaneous objection."). Moreover, in light of the fact that the testimony of Dr. Escoto did not, as discussed above, contradict the admissions, any error in the trial court's comments was harmless. See *Allen v. City of Ottawa*, 80 Ill. App. 3d 1032, 1038 (1980) (finding that although the trial court erred in its instruction to the jury, because the error was harmless, reversal was not required). As for plaintiff's other two contentions—that the trial court erred in denying her jury instruction on stipulations and in refusing to send the admissions back to the jury—plaintiff has made only cursory and conclusory arguments in support of these claims and has not cited any authority for the proposition that the trial court erred. For these

reasons, those contentions are deemed forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (providing that an appellant's brief must contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18 ("The failure to provide an argument and to cite to facts and authority, in violation of Rule 341, results in the party forfeiting consideration of the issue.").

¶ 50 Because Dr. Escoto's testimony did not contradict Advocate's admissions, the trial court did not err in allowing his testimony.

¶ 51 Dr. Parikh

¶ 52 Plaintiff's last contention on appeal is that the trial court erred in allowing Dr. Parikh to testify because her testimony came as an unfair surprise to plaintiff and because her testimony was irrelevant to defendants' negligence. The trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 28.

¶ 53 Plaintiff argues that defendants' calling of Dr. Parikh constituted an unfair surprise to her because HHS had previously denied defendants' request that Dr. Parikh testify at trial, the federal court had vacated the trial court's subpoena of Dr. Parikh, and the trial court had ruled that Dr. Parikh's discovery deposition could not be used as an evidence deposition at trial. According to plaintiff, defendants should not have been allowed to present Dr. Parikh at the end of trial "after it was already established that she could not testify" and that by presenting Dr. Parikh, defendants engaged in gamesmanship. Plaintiff argues that had she known that Dr. Parikh would testify, she would have discussed Dr. Parikh in her opening statement and that she should not have been denied the opportunity to call Dr. Parikh in her case-in chief. There is no

merit to any of plaintiff's arguments in this respect, and most of them are based on a mischaracterization of the record.

¶ 54 Despite plaintiff's contention to the contrary, there was never any ruling by the trial court that Dr. Parikh would not be allowed to testify, and it was clear to all involved that the possibility existed throughout trial that Dr. Parikh would testify. The record very clearly demonstrates that defendants had long sought to secure the testimony of Dr. Parikh at trial and that plaintiff was well aware of the efforts made by defendants in this respect. Prior to the commencement of trial, defendants sought to have the trial continued in an effort to obtain a final resolution of the issue in federal court. Plaintiff objected and insisted that the trial proceed as scheduled. During trial, the status of the federal proceedings to secure Dr. Parikh as a witness was discussed on numerous occasions. Throughout, the trial court made clear that although it would not allow the use of Dr. Parikh's discovery deposition at trial, it was not barring Dr. Parikh from being called live. Based on this, plaintiff's claim that she was somehow taken by surprise is disingenuous. Moreover, Plaintiff was offered the opportunity to have the trial continued until final resolution of the issue was had, but she refused. She cannot now complain that she did not have a definitive answer to whether Dr. Parikh would testify.

¶ 55 As for plaintiff's argument that she would have discussed Dr. Parikh in her opening statement had she known that Dr. Parikh would testify, the decision to not discuss Dr. Parikh in her opening statement was entirely hers to make. She chose to approach the trial as if Dr. Parikh would not testify—despite knowing that defendants were doing all in their power to secure her testimony—and it simply turned out that she chose incorrectly.

¶ 56 Finally, plaintiff's contention that the trial court wrongly refused her the right to call Dr. Parikh in her case in chief is a bit of an oversimplification. When plaintiff requested that she be

allowed to call Dr. Parikh before Monday, the trial court instructed defendants to make a request that Dr. Parikh testify sooner. HHS informed defendants that Dr. Parikh was only available to testify on Monday, and defendants relayed that information to the trial court. Accordingly, the trial court determined that Dr. Parikh would testify on Monday. Admittedly, the trial court also stated that plaintiff had failed to disclose Dr. Parikh as a potential witness in plaintiff's case and, from the record, that appears to have been incorrect. However, it does not change our opinion that the trial court did not abuse its discretion. If plaintiff wanted to call Dr. Parikh in her case in chief, she should have joined in the efforts to secure Dr. Parikh's testimony. Instead, she was content in (and even insisted on) pursuing her case without Dr. Parikh's testimony. It was only when defendants finally secured Dr. Parikh's attendance that plaintiff determined that Dr. Parikh was a vital part of her case. Under such circumstances, it is difficult to believe that plaintiff was somehow deprived of an essential element of her case. This is only bolstered by the fact that plaintiff makes no argument on appeal as to what testimony or right plaintiff was deprived of by Dr. Parikh testifying in defendants' case in chief rather than plaintiff's. See Ill. S. Ct. R. 341(h)(7) (providing that an appellant's brief must contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *CE Design, Ltd.*, 2015 IL App (1st) 132572, ¶ 18 ("The failure to provide an argument and to cite to facts and authority, in violation of Rule 341, results in the party forfeiting consideration of the issue."); see also *State Bank of Arthur v. Sentel*, 10 Ill. App. 3d 86, 92 (1973) (where excluded testimony would not have altered the outcome of trial, any error in failing to admit it was harmless).

¶ 57 For these reasons, we cannot conclude that plaintiff suffered unfair surprise or was denied a fair trial by the trial court permitting Dr. Parikh to testify.

¶ 58 Likewise, we do not agree that the trial court erred in concluding that Dr. Parikh's testimony was relevant to the issue of defendants' negligence. According to plaintiff, defendants admitted that the only reason for Dr. Parikh's testimony was to show that Dr. Parikh was negligent. In response, plaintiff argues that because Dr. Parikh's subsequent treatment of Leonor—negligent or otherwise—would not relieve defendants of liability for their own negligence, there was no relevance of Dr. Parikh's testimony.

¶ 59 Once again, plaintiff's mischaracterization of the record is blatant. The record makes abundantly clear that defendants did not seek to introduce Dr. Parikh's testimony regarding her subsequent treatment of Leonor in an effort to pin the blame on Dr. Parikh. Defense counsel repeatedly disavowed such accusations by plaintiff's counsel and defendants' questioning of Dr. Parikh never once approached the line of implying that Dr. Parikh was negligent.

¶ 60 Rather, as the trial court and defense counsel repeatedly informed plaintiff's counsel, the purpose for which defendants sought the testimony of Dr. Parikh and the reason the trial court admitted it was that it was relevant to the question of whether Dr. Escoto informed Leonor of the abnormal CT results. We agree that Dr. Parikh's testimony was relevant to this issue. One of plaintiff's primary claims of negligence on the part of Dr. Escoto was that he failed to inform Leonor of the liver mass discovered on the CT. Dr. Parikh's testimony that, in November 2012, Leonor informed her that she (Leonor) had seen a hepatologist two months prior (September 2012) indicates that Leonor had, in fact, been informed of the abnormal CT results by Dr. Escoto. After all, it does not appear that Dr. Parikh could have informed her of them because there is no evidence that she saw Leonor between the time that she (Dr. Parikh) became aware of the abnormal CT results (when she received the ER visit records in late August 2012) and the time Leonor claims to have seen the hepatologist in September 2012. Because Dr. Parikh's

testimony tends to make it more probable that Dr. Escoto informed Leonor of the abnormal CT results, it is relevant. See *LaSalle Bank, N.A. v. C/HCA Development Corp.*, 384 Ill. App. 3d 806, 822 (2008) ("Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence."). Accordingly, the trial court did not err in concluding that Dr. Parikh's testimony was relevant and admissible.

¶ 61 Plaintiff states in passing in her brief that the trial court erroneously gave the long form jury instruction IPI 12.05 with the short form of jury instruction IPI 15.01. Again, plaintiff's "argument" in this respect is a cursory and conclusory sentence, claiming that the trial court erred. She does not offer any substantive argument as to why this act on the part of the trial court constituted error, nor does she cite any authority in support of her position. Thus, again, plaintiff's contention is waived on appeal. See Ill. S. Ct. R. 341(h)(7) (providing that an appellant's brief must contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *CE Design, Ltd.*, 2015 IL App (1st) 132572, ¶ 18 ("The failure to provide an argument and to cite to facts and authority, in violation of Rule 341, results in the party forfeiting consideration of the issue.").

¶ 62 CONCLUSION

¶ 63 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 64 Affirmed.